

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

TESSERA ADVANCED TECHNOLOGIES,  
INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. and  
SAMSUNG ELECTRONICS AMERICA,  
INC.,

Defendants.

Civil Action No. 2:17-cv-671-JRG

**FILED UNDER SEAL**

**JURY TRIAL DEMANDED**

**TESSERA ADVANCED TECHNOLOGIES, INC.'S SUR-REPLY TO DEFENDANTS'  
MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)**

This Court's threshold inquiry is to determine whether the forum-selection clause applies.

Samsung argues that this case should be transferred because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, it is not even true that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tessera has done nothing more, as its Amended Complaint confirms. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At bottom, all of Samsung's arguments [REDACTED] are nothing more than an attempt to "manufacture a contract dispute simply as a means to import the forum-selection clause into the case." *Indus. Print Techs. LLC v. Canon U.S.A., Inc.*, Case No. 2:14-cv-00019, 2014 WL 7240050, at \*5 (E.D. Tex. Dec. 19, 2014). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, Samsung's motion should be denied.

[REDACTED]

[REDACTED]

[REDACTED]

Samsung's only argument for meeting the threshold requirement—that this case could have been brought in Delaware—is that, based [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Samsung's cited cases regarding the

threshold issue all found a forum-selection clause applied, which is not true here.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See,*  
*e.g., Beal Bank, SSB v. Lucks*, No. 14896, 2001 WL 220252, at \*3, \*3 n.11 (Del. Ch. Feb. 20,  
2001) (holding that where language is unambiguous “there is no room for interpretation” (internal  
quotation omitted)). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This argument is as brazen as it is futile. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Any such future dispute is not ripe, and there presently is no dispute whatsoever. *IPS Corp. v. WCM Indus., Inc.*, No. 2:12-cv-02694-JMP-tmp, 2013 WL 1338179, at \*19-20 (W.D. Tenn. Mar. 29, 2013) (refusing to apply forum-selection clause based on potential future claims of breach); *cf. Lower Colo. River Auth. v. Papalote Creek II, L.L.C.*, 858 F.3d 916, 921 (5th Cir. 2017) (refusing to enforce arbitration clause because dispute was not ripe).

[REDACTED]

[REDACTED]

In sum, Samsung has not identified any [REDACTED]  
[REDACTED], let alone a non-frivolous one. [REDACTED]

[REDACTED]

[REDACTED]

## **II. PUBLIC AND PRIVATE INTEREST FACTORS WEIGH AGAINST TRANSFER**

As Samsung cannot satisfy the threshold requirement for transfer, there is no need to consider the public or private interest factors. Nevertheless, here both the public and private interest factors weigh against transfer. The Delaware district is understaffed and congested. There is no indication the Delaware judicial nominees will be confirmed any time soon. And regardless

of whether and when the nominees are confirmed, the fact remains that schedules in Delaware are slower than this district. (Resp. at 13.) Nor does Samsung's attempt to highlight Delaware as a state of incorporation trump that the only physical presence by the parties in either district is SEA in this district. *See, e.g., Comcast Cable Commc'ns, LLC v. British Telecomms. PLC*, No. 3:12-cv-1712, 2012 WL 6625359, at \*5 (N.D. Tex. Dec. 20, 2012) (finding that local interest factor weighs against transfer because even though multiple parties were Delaware corporations, none had an office in Delaware, while one had a physical presence in the district). Thus, the public interest factors also weigh against transfer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

And with respect to SAS, under Rule 45(c)(1)(B), this Court does have subpoena power to compel SAS's witnesses to come to trial. Finally, Samsung is incorrect that the case has just begun; each side has already produced thousands of pages and the case is well underway. (Resp. at 12.) On balance, the private interest factors weigh against transfer, and certainly do not establish that it would be clearly more convenient to litigate in Delaware.

### III. CONCLUSION

For the foregoing reasons, Samsung's motion should be denied.

Respectfully submitted,

Dated: March 2, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this the 2nd day of March, 2018.

/s/ Claire Henry  
Claire Henry

**CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL**

This is to certify that the above document should be filed under seal because it contains material designated by the parties as confidential pursuant to the Stipulated Protective Order entered in this case (Dkt. 56).

/s/ Claire Henry  
Claire Henry